

Report to the California Bar Association Regarding
Professional Misconduct by Carol Ann Humiston (State
Bar #115592)

April 1, 2019

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¹Note that [blue text](#) indicates clickable links internal to this document whereas [green text](#) indicates clickable links to resources on the Internet.

1 Synopsis

1. Carol Humiston is an attorney licensed in California who advises the South Park Business Improvement District (“SPBID”) with respect to compliance with the California Public Records Act (“CPRA”).
2. The CPRA requires the SPBID to provide copies of records for no more than the direct cost of reproduction and to do an adequate search for records.
3. Ms. Humiston advised the SPBID to violate the CPRA by employing stratagems to charge far more than the direct cost in order to discourage me from making requests.
4. She also advised the SPBID that there would be no consequences if their officers did not do an adequate search for records and merely stated that they didn’t have any.
5. In advising her client to violate the CPRA in these ways Ms. Humiston violated California State Bar Rule 1.2.1, which states in pertinent part that:

A lawyer shall not counsel a client to engage, or assist a client in conduct that the lawyer knows is criminal, fraudulent, or a violation of any law, rule, or ruling of a tribunal.

2 Background

2.1 Business improvement districts

6. Business improvement districts (“BIDs”) are a type of assessment district authorized by the [Property and Business Improvement District Law of 1994](#) (California Streets and Highways Code §36600 et seq. – “the PBID law”).²
7. The PBID law at [§36612](#) requires each BID to be administered by a private non-profit corporation known as a Property Owners’ Association (“POA”).
8. The PBID law at [§36612](#) makes POAs subject to the [California Public Records Act](#) (California Government Code §6250 et seq. – “CPRA”)³ as follows:

... an owners’ association shall comply ... with the California Public Records Act ... for all records relating to activities of the district.

2.2 The California Public Records Act

9. The CPRA, which grants people the right to inspect and to obtain copies of public records, states the utmost importance of this right at [§6250](#):

² Note that all citations to the PBID law are citations to the Streets and Highways Code.

³ Note that all citations to the CPRA are citations to the Government Code.

In enacting this chapter, the Legislature . . . finds and declares that access to information concerning the conduct of the peoples business is a fundamental and necessary right of every person in this state.

10. The right to have public agencies, including BIDs, comply with the CPRA is a fundamental right granted by the Constitution of California at [Article I Section 3\(b\)\(7\)](#).
11. The CPRA at [§6253\(b\)](#) states that:

Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication. or a statutory fee if applicable.

12. The CPRA at [§6253\(c\)](#) states that:

Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor.

13. The CPRA at [§6253.9\(a\)](#) states that:

Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:

- (1) The agency shall make the information available in any electronic format in which it holds the information.
- (2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.

14. The CPRA per [State Bd. of Equalization v. Superior Court \(1992\) 10 Cal.App.4th 1177](#) requires agencies, including BIDs, to make “a reasonable effort” to locate records.

2.3 Carol Humiston

15. Carol Humiston is an attorney licensed to practice in California. Her State Bar number is #115592. She’s “Special Counsel” with law firm [Bradley & Gmelich](#).

2.4 The South Park Business Improvement District

16. The South Park BID (“SPBID”) is a BID in the City of Los Angeles.
17. Ellen Riotto is the executive director of the SPBID. Katie Kiefer was formerly the director of operations of the SPBID.
18. Paul Keller is a member of the BID’s board of directors. Mr. Keller is employed by real estate development firm Mack Urban. J.D. Siegel is Mack Urban’s general counsel.
19. I have made a number of requests under the CPRA to the SPBID.
20. Ms. Humiston represents the SPBID with respect to my CPRA requests.

3 CPRA requests to the SPBID and Ms. Humiston’s advice

3.1 A February 2017 request and Ms. Humiston’s advice

3.1.1 The request

21. In February 2017 I asked the SPBID for copies of certain emails.
22. Prior to that time the SPBID had sent me copies of electronic files as attachments to emails, at no cost to either party.

3.1.2 The advice

23. On February 10, 2017 Ms. Humiston advised her client to transfer files to me by USB flash drive, which I would have to pay for.
24. She advised her client to buy very small capacity drives so that I would have to pay for as many as possible.
25. She explicitly advised her client that the purpose of doing so was to make me pay.
26. See [Exhibit 1](#) on page [10](#), in which Ms. Humiston states:

From: Carol Humiston <chumiston@bglawyers.com>
Date: Friday, February 10, 2017 at 4:42 PM
To: Katie Kiefer <katie@southpark.la>
Subject: RE: CPRA

I would not. I would put it on a zip drive EVERY TIME and make him pay. Buy them with very little storage capacity, so you need to use more than one and charge him for more than one. He is collecting a lot of stuff he does not want. We need to make him pay. If he pushes back about paying to put

on a zip drive, let me know. I would love to fight that battle. And we are still meeting on Monday?

Carol A. Humiston, Esq.
Bradley & Gmelich

3.2 A July 2017 request and Ms. Humiston's advice

3.2.1 The request

27. In 2017 I asked the SPBID for copies of certain emails. Per the CPRA at §6253.9(a) I asked the BID to provide these emails in a native email format, and advised the BID that native email formats included MSG and PST files.

3.2.2 The advice

28. On July 13, 2017 Ms. Humiston advised her clients to use PST format rather than MSG format because they would be able to charge me for the time involved in exporting the emails. See Exhibit [Exhibit 2](#) on page 15:

From: Carol Humiston <chumiston@bglawyers.com>
Date: Thursday, July 13, 2017 at 8:09 AM
To: Katie Kiefer <katie@southpark.la>
Cc: Ellen Riotto <ellen@southpark.la>
Subject: Re: SPBID: PST format to save emails

Yes it is a hassle and time consuming to copy the emails from the PST format and save them in a PST format, but that does not mean you do not have to do it. That is why I suggested in my draft response that he has to pay for it. It is significantly faster to store in msg (I tried both processes just to see) and that is a format he will accept but ...then there is no cost to him.

Carol Ann Humiston, Esq.
Bradley & Gmelich

3.3 Request of October 18, 2018 and Ms. Humiston's advice

3.3.1 The request

29. On October 18, 2018 I submitted a CPRA request to the SPBID asking for, among other things, emails related to BID business in the possession of Paul Keller, a member of the SPBID board of directors and an employee of Mack Urban. At some point J.D. Siegel, Mack Urban's general counsel, got involved, and on November 1, 2018 Carol Humiston emailed him with a description of, among other things, how she advised her BID clients with respect to board member emails.

30. Much of this background and the advice quoted below is drawn from an email conversation that the SPBID gave me on November 29, 2018, in response to a CPRA request. This email conversation can be found below in [Exhibit 3](#) on page 20.

3.3.2 The advice

31. On November 1, 2018, in the above-mentioned email to J.D. Siegel, found in [Exhibit 3](#) on page 20, Ms. Humiston described her advice to her BID clients thus:

My advice to the BIDs is that unless they want to get involved in extremely costly litigation – and this particular CPRA requestor is extremely litigious and has a cadre of attorneys who pursue his cases for him – upon receipt of a CPRA request for Board member emails pertaining to the BID’s business, they ask the Board member and they accept the Board members’ response that they have no emails. I think it is fairly clear from the City of San Jose case that the BID has no right to search the private email itself. If the Board member does disclose email, the BID should review them to be sure they constitute BID business, and redact out private information including IP addresses, etc. And I also advise that Board members who do receive and send BID business from their private emails not retain those emails unless there is a reason to do so. I do not believe any Court would hold that the BID or the Court can control when a private person decides to retain or delete their emails.

4 Conclusion

32. The Constitution of California enshrines public agencies’ compliance with the CPRA as a fundamental right. The legislature has also found and declared its fundamental importance.
33. The CPRA requires public agencies to provide copies for no more than the direct cost of copying. Ms. Humiston advised her clients to violate this requirement on at least two occasions.
34. First, as shown above in [Section 3.1](#), she advised the SPBID to purposely buy USB drives that were too small for the amount of data being transferred so that I would have to pay additional money over the direct cost of copying.
35. Second, as shown above in [Section 3.2](#), she advised the SPBID to export data in the most inconvenient format possible, again with the purpose of making me pay additional money over the direct cost of copying.
36. The CPRA requires public agencies to conduct an adequate and reasonable search for requested records. Ms. Humiston advised her clients to violate this requirement on at least one occasion, as shown above in [Section 3.3](#).

37. California State Bar Rule 1.2.1 forbids attorneys to counsel their clients to violate any law. Therefore Ms. Humiston violated this bar rule on at least three occasions with respect to violations of the CPRA and with respect to compliance with the Constitutional mandate that her clients obey the CPRA.

5 Exhibits

5.1 Exhibit 1 – February 2017 email conversation including Humiston and Kiefer

Subject: Re: CPRA
From: Ellen Riotto <ellen@southpark.la>
Date: 2/10/17, 5:06 PM
To: Katie Kiefer <katie@southpark.la>, Carol Humiston <chumiston@bglawyers.com>

Thanks for all the insight, Carol. Yes, still on for Monday's call. Have a great weekend and talk to you then!

Ellen Riotto
Interim Executive Director
id:image

South Park Business Improvement District
1100 S Flower St, Suite #3400, Los Angeles, CA 90015
ellen@southpark.la | o. 213 663 1112 | c. 401 439 8147
southpark.la | [fb.com/SouthParkLosAngeles](https://www.facebook.com/SouthParkLosAngeles) | Twitter/Instagram @SouthParkLA
24/7 DISPATCH: 866-560-9346

From: Katie Kiefer <katie@southpark.la>
Date: Friday, February 10, 2017 at 5:04 PM
To: Carol Humiston <chumiston@bglawyers.com>
Cc: Ellen Riotto <ellen@southpark.la>
Subject: Re: CPRA

Noted on paying for flash drives. Forgot about those suckers.

Looping Ellen back onto the chain and yes, still on for Monday's call.

Have a great weekend, Carol.

Katie Kiefer
South Park BID
1100 S. Flower St., Suite #3400, Los Angeles, CA 90015
o. 213 663 1120

24/7: 866 560 9346

From: Carol Humiston <chumiston@bglawyers.com>
Date: Friday, February 10, 2017 at 4:42 PM
To: Katie Kiefer <katie@southpark.la>
Subject: RE: CPRA

I would not. I would put it on a zip drive EVERY TIME and make him pay. Buy them with very little storage capacity, so you need to use more than one and charge him for more than one. He is collecting a lot of stuff

Re: CPRA

he does not want. We need to make him pay. If he pushes back about paying to put on a zip drive, let me know. I would love to fight that battle.

And we are still meeting on Monday?

Carol A. Humiston, Esq.
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From: Katie Kiefer [mailto:katie@southpark.la]
Sent: Friday, February 10, 2017 4:40 PM
To: Carol Humiston
Cc: Ellen Riotto
Subject: Re: CPRA

Very helpful, thank you.

With regards to native format, can the "public benefit doesn't outweigh the private benefit" reasoning if we want to continue giving him printed PDFs?

Katie Kiefer
South Park BID
1100 S. Flower St., Suite #3400, Los Angeles, CA 90015
o. 213 663 1120

24/7: 866 560 9346

From: Carol Humiston <chumiston@bglawyers.com>
Date: Thursday, February 9, 2017 at 7:13 PM
To: Katie Kiefer <katie@southpark.la>, "Katie Kiefer (katie.e.kief@gmail.com)" <katie.e.kief@gmail.com>
Cc: Ellen Riotto <ellen@southpark.la>
Subject: CPRA

Katie,

I hope I am covering everything you asked about. I set this up in a particular way for a reason so if you want to talk tomorrow, I am in most of the day. I would suggest you do not make this part of a running email. Have them stand alone.

You have requested thousands of pages of records previously provided to you, specifically _____, be reprovided to you in their "native format." The voluminous scope of that request, as well as a significant number of additional CPRA requests you made in 2016, necessitated that the BID hire a paralegal to search the BIDs computers for the records you sought and redact exempt materials, a practice that the BID will not be repeating in 2017. The CPRA is to be interpreted as a balance between the right of public access and the need for efficient and effective BID management. In this case, I have concluded that the public benefit in searching the BIDs computers a second time and redacting exempt material a second time in order to provide you those records in their native format does not outweigh the public burden in doing so. In the future, you will be requested to provide a more specific and focused request, which I will be happy to assist you in doing.

Your requests for "all emails from 2016 between anyone at the SPBID, staff or board, and anyone at StreetPlus," seeks a voluminous class of documents which will need to be significantly focused before any attempt to comply can be commenced. Moreover aside from the sheer volume of documents, I have determined that the nature of the records requested would include records that would fall under a number of exemptions under the CPRA, including personnel information, the deliberative process privilege, proprietary information, identity of informants, records relating to arrests, personal contact information, and records to which the public benefit of disclosure does not outweigh the public benefit in non-disclosure. Further, the burden of redaction would be too great because exempt matter cannot be reasonably segregated and is inextricably intertwined in the records you have requested. Likewise, your request for "all emails between anyone on the SPBID staff, present or former, or Board and anyone at lacity.org or any of its subdomains for 2016 as well as anybody at the domain devine-strategies.com from 1969 through whenever you comply with this request" seeks a voluminous class of documents which will need to be significantly focused before any attempt to comply can be commenced. Again, aside from the sheer volume of documents, I have determined that the nature of the records requested would include records that would fall under a number of exemptions under the CPRA, including the deliberative process privilege, proprietary information, personal contact information, and records to which the public benefit of disclosure does not outweigh the public benefit in non-disclosure. In addition, I have no idea what all of the "lacity.org domain names" are. Further, the burden of redaction would be too great because exempt matter cannot be reasonably segregated and is inextricably intertwined in the records you have requested. You will need to provide a specific and more focused request. If you would like to inform me what you are interested in attempting to locate, I will be happy to assist you in limiting your request to obtain the necessary records outside the exemptions.

In response to your email of February 9, 2017, the BID does not have a mailing list that will be used to print out petitions for the BID adoption/renewal process. However, if it did have it, I have determined that such a list would contain personal contact information, would invade the right to privacy of the individuals whose personal contact information was contained thereon, the public benefit in disclosure would not outweigh the public benefit in non-disclosure, and as such, would be exempt from disclosure.

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—image001.png—



—Attachments:—

image001.png

1.3 kB

5.2 Exhibit 2 – July 2017 email conversation including Humiston and Kiefer

Subject: Re: SPBID: PST format to save emails
From: Ellen Riotto <ellen@southpark.la>
Date: 7/13/17, 10:36 AM
To: Katie Kiefer <katie@southpark.la>

Let's check in on this today. I'm in for the next hour.

From: Carol Humiston <chumiston@bglawyers.com>
Date: Thursday, July 13, 2017 at 8:09 AM
To: Katie Kiefer <katie@southpark.la>
Cc: Ellen Riotto <ellen@southpark.la>
Subject: Re: SPBID: PST format to save emails

Yes it is a hassle and time consuming to copy the emails from the PST format and save them in a PST format, but that does not mean you do not have to do it. That is why I suggested in my draft response that he has to pay for it. It is significantly faster to store in msg (I tried both processes just to see) and that is a format he will accept but ...then there is no cost to him.

Carol Ann Humiston, Esq.
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On Jul 13, 2017, at 7:52 AM, Katie Kiefer <katie@southpark.la> wrote:

carol - see below PST input from our IT. They also explained to me, the Windows version of Outlook can export your email (even if that email resides on office 365) to a PST file.

In cases where the end user only has a Mac, we can either:

a) assist you in getting a Windows PC, load your email on it, then assist in learning how to export to PST

b) do the work for you on one of our own PC's at your direction.

I'm gathering that yes, PST is a format to save emails but since it is not a format that our office uses that we aren't obligated to use that format (6253.9(a)(2)). Our IT makes it seem like a hassle to save in PST, especially for the 3 out of 4 staff using Macs. Does your IT agree?

Katie Kiefer

South Park BID

[1100 S. Flower St., Suite #3400, Los Angeles, CA 90015](#)

o. [213 663 1120](#)

[24/7: 866 560 9346](#)

Begin forwarded message:

From: Adam Harvey <aharvey@estream.com>

Date: July 12, 2017 at 10:46:53 PM PDT

To: Katie Kiefer <katie@southpark.la>, Michael Wallace
<mgwallace@estream.com>

Cc: Peter Northcott <pnorthcott@estream.com>, Grant Moncur
<gmoncur@estream.com>

Subject: RE: SPBID: PST format to save emails

Katie -

This is done by adding another data file (pst) to your Outlook profile. Then you can drag copies of said emails into the PST file. I am not sure if you can do this on a Mac version of Outlook. You may be able to do this on the newest version 2016, but previous versions did not able to use PST's.

Michael or Peter should be able to assist you with this if needed as I am out of the office tomorrow. I should be back in on Friday. We may be able to get you setup and show you how to start moving emails over.

The below article explains a little on how to do this. Again, not sure if this is a feature for the Mac Outlook.

<https://support.office.com/en-us/article/Create-an-Outlook-Data-File-pst-to-save-your-information-24e6eafe-5700-4994-99e6-1783f556bbd2>

Cheers,
Adam Harvey

eStream IT Support
949-900-0415 Team
949.900.0405 Direct
949.421.7993 Cell

From: Katie Kiefer [<mailto:katie@southpark.la>]
Sent: Wednesday, July 12, 2017 20:54
To: Michael Wallace <mgwallace@estream.com>
Cc: Adam Harvey <aharvey@estream.com>; Peter Northcott <pnorthcott@estream.com>; Grant Moncur <gmoncur@estream.com>
Subject: Re: SPBID: PST format to save emails

If someone wants to request email copies from us and they're requesting PST format, how does one pull an email in that format?

Let's say this, when email copies are requested we save them as PDF. I've never saved emails any other way.

Katie Kiefer
South Park BID
[1100 S. Flower St., Suite #3400, Los Angeles, CA 90015](#)
o. [213 663 1120](#)

[24/7: 866 560 9346](#)

On Jul 12, 2017, at 4:24 PM, Michael Wallace <mgwallace@estream.com> wrote:

Katie,

The PST file is the heart of Outlook as these are where the users profiles (email accounts) are setup to store all email messages, contacts, calendar events, tasks, etc. So this file is an important file. If there is anything else you need please let us know.

Thanks.

--

Michael Wallace
eStream Inc.
Team: 949-900-0415

From: Katie Kiefer [<mailto:katie@southpark.la>]
Sent: Wednesday, July 12, 2017 3:46 PM
To: Adam Harvey <aharvey@estream.com>; Michael Wallace <m Wallace@estream.com>; Peter Northcott <pnorthcott@estream.com>; Grant Moncur <gmoncur@estream.com>
Subject: SPBID: PST format to save emails

Got an odd question:

What is PST format? PST format is what Outlook uses to store emails supposedly? I am clueless on this topic.

THX for the needed insight.

Katie Kiefer
Director of Operations
<image001.png>
South Park Business Improvement District
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katie@southpark.la | o. 213 663 1120
southpark.la | [Facebook](#) | [Twitter](#) | [Instagram](#)

24/7 DISPATCH: 866-560-9346

5.3 Exhibit 3 – November 2018 email conversation including Humiston and Siegel

Subject: Block by Block
From: Paul Keller <pkeller@mackregroup.com>
Date: 11/5/18, 4:43 PM
To: Ellen Riotto <ellen@southpark.la>

I vote in favor of the award and agreement.

Paul Keller

MACK | REAL ESTATE GROUP

[1150 S. Olive, Suite 2250](#)
[Los Angeles, CA 90015](#)
[213 437 0479](#) telephone
[213 675 4475](#) cell
pkeller@mackregroup.com

[60 Columbus Circle, 20th Floor](#)
[New York, New York 10023](#)
[212 484 0050](#) telephone

[1008 Western Avenue, Suite 201](#)
[Seattle, WA 98104](#)
[206 876 3784](#) telephone
[213 675 4475](#) cell

On Nov 5, 2018, at 7:32 PM, Ellen Riotto <ellen@southpark.la> wrote:

Apologies for the delay here, JD. Happy to connect – how's tomorrow between 2 and 4pm, or Wednesday between 11am and 3pm?

Best,

Ellen

Ellen Riotto
Executive Director
<image001.png>
South Park Business Improvement District
1100 S Flower St, Suite #3400, Los Angeles, CA 90015
ellen@southpark.la | o. 213 663 1112
southpark.la | [Facebook](#) | [Twitter](#) | [Instagram](#)
24/7 DISPATCH: 866-560-9346

From: "J.D. Siegel" <jdsiegel@mackregroup.com>

Date: Thursday, November 1, 2018 at 11:38 AM
To: Carol Humiston <chumiston@bglawyers.com>
Cc: Ellen Riotto <ellen@southpark.la>, Paul Keller <pkeller@mackregroup.com>
Subject: RE: CA records request

Carol, great speaking with you. Appreciate the guidance by phone and below.

Ellen, can we connect about email going forward? Let me know when is good. Thanks

JD

From: Carol Humiston [<mailto:chumiston@bglawyers.com>]
Sent: Thursday, November 01, 2018 1:10 PM
To: J.D. Siegel <jsiegel@mackregroup.com>
Cc: ellen@southpark.la; Paul Keller <pkeller@mackregroup.com>
Subject: RE: CA records request

Hi JD,

I presume this inquiry is in response to Ellen's prior email.

I can tell you I am currently litigating the issue—Are the emails of volunteer Board members of a Business Improvement District, from their private email domains on their private computers, subject to disclosure as “public records” under the CPRA? This is an issue of first impression under the CPRA. As an attorney representing BIDs, I am taking the position that they are not.

BUT ...

BIDs are defined as public agencies under California law (not public entities). The CPRA applies to public agencies and public entities. The California Supreme Court has held that employees of public entities that use their private email to conduct the public entities' business must provide those private emails in response to a CPRA request. See *City of San Jose v. Superior Court*, 2 Cal. 5th 608 (2017).

Because of the foregoing, I think it is very possible that the Court in my case will conclude the same rationale for the City of San Jose case applies to volunteer Board members. So what does this mean for volunteer Board members?

My advice to the BIDs is that unless they want to get involved in extremely costly litigation—and this particular CPRA requestor is extremely litigious and has a cadre of attorneys who pursue his cases for him—upon receipt of a CPRA request for Board member emails pertaining to the BID's business, they ask the Board member and they accept the Board members' response that they have no emails. I think it is fairly clear from the City of San Jose case that the BID has no right to search the private email itself. If the Board member does disclose email, the BID should review them to be sure they constitute BID business, and redact out private information including IP addresses, etc. And I also advise that Board members who do receive and send BID business from their private emails not retain those emails unless there is a reason to do so. I do not believe any Court would hold that the BID or the Court can control when a private person decides to retain or delete their emails.

I would be happy to talk to you about this. Just give me a call.

Carol

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From: J.D. Siegel <idsiegel@mackregroup.com>
Sent: Thursday, November 01, 2018 9:25 AM
To: Carol Humiston <chumiston@bglawyers.com>
Cc: ellen@southpark.la; Paul Keller <pkeller@mackregroup.com>
Subject: CA records request

Carol,

Further to the questions that came through Thomas Cho of our LA office, can you point me to the statute or guidance that suggests Mack Real Estate Group is required to make its email archives available in response to a California public records request? Any emails on that server are the property of our firm and not its personnel.

All I have been able to locate is a statute applying to public agencies/instrumentalities. I have been unable to make the leap from requirements that apply to an agency to obligations of a firm that employs a person who is serving as a director for one of those agencies.

Furthermore, if BID activity is subject to public records request, I would strongly prefer that the BID provide email accounts to its directors and not conduct business through personal/work email addresses. Is that something to discuss with you, Ellen?

Thank you for your assistance. I'm around today if you'd like to connect by phone.

Regards,
JD

J.D. Siegel
General Counsel & CCO

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—Attachments:—

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